Attorney General
Betty D. Montgomery

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Via Overnight Delivery

Magalie R. Salas
Federal Communications Commission
445 12th St., S.W.
TW-A325
Portals II Building
Washington, D.C. 20554

Re: *In the Matter of: Access Charge Reform*, CC Docket No. 96-262; *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1; *Low Volume Long Distance users*, CC Docket No. 99-249; *and Federal State Joint Board on Universal Service*, CC Docket No. 96-45.

Dear Ms. Salas:

Please find enclosed the original and eleven copies of comments submitted on behalf of the **Public Utilities Commission of Ohio** in the above referenced docket. Please return one stamped copy in the enclosed self-addressed, stamped return envelope. These comments will also be filed with the FCC's electronic comment filing system.

Thank you for your consideration in this matter.

Respectfully submitted,

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Federal State Joint Board on Universal Service	:	CC Docket No. 96-45

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO RESPONDING TO THE PROPOSAL OF THE COALITION FOR AFFORDABLE LOCAL AND LONG DISTANCE SERVICES

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ACRONYM LIST

BOC	Bell Operating Companies
CALLS	Coalition for Affordable Local and Long Distance Calls
CBT	Cincinnati Bell Telephone
CCLC	Carrier Common Line Charge
FCC	Federal Communications Commission
GDP-PI	Gross Domestic Product - Price Index
ILEC	Incumbent Local Exchange Carrier
IP	Internet Protocol
IXC	Interexchange Carrier
LEC	Local Exchange Carrier
MLB	Multiline Business
NPRM	Notice of Proposed Rulemaking
PICC	Presubscribed Interexchange Carrier Charge
RIC	Residual Interconnection Charge
SLC	Subscriber Line Charge
TELRIC	Total Element Long Run Incremental Cost
TIC	Transport Interconnection Charge
USF	Universal Service Fund
XDSL	Digital Subscriber Line Technology

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COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO RESPONDING TO THE PROPOSAL OF THE COALITION FOR AFFORDABLE LOCAL AND LONG DISTANCE SERVICES

I. INTRODUCTION

The Public Utilities Commission of Ohio ("Ohio Commission" or "PUCO") opposes the proposal filed by the Coalition for Affordable Local and Long Distance Services (CALLS), which was submitted by CALLS on a "take-it-or-leave-it" basis. Because the Notice of Proposed Rulemaking (NPRM) also invited commenters to address the individual components of the CALLS plan, the Ohio Commission will proceed to comment on the specific issues raised or implicated by the CALLS plan. Notwithstanding the Ohio Commission's position that the CALLS proposal should be rejected as filed, some parts of the proposal do have merit and could be further examined by the Federal Communications Commission (FCC). In this regard, however, the Ohio Commission urges the FCC to keep the CALLS proposal in perspective, as a voluntarily negotiated result among a limited set of stakeholders that does not represent any consumer interests. To the extent the FCC wishes to consider the merits of individual parts of the proposal, it should do so independently based on public interest considerations.

The first major component of the proposal is the restructuring and increases associated with the Subscriber Line Charge (SLC). Generally, the proposal is to merge the presubscribed interexchange carrier charge (PICC) and, in most areas, the carrier common line charge (CCLC) into the SLC. Also, both the residential and business SLC would be rate rebalanced and subjected to new rate caps over the next five years.

The Ohio Commission questions the FCC's continued allowance of end-user surcharges such as the PICC. At a minimum, the FCC should work to ensure that such "pass through" charges reflect cost. Given the current practices of inter-exchange carriers (IXCs), as tacitly endorsed by the FCC, the Ohio Commission believes that there is merit in streamlining the common line charges, provided that the resulting SLC would include only non-traffic sensitive costs associated with the loop and would not include any traffic-sensitive charges (*e.g.*, TIC, marketing, information surcharge, local switching, etc.). Another condition to Ohio's endorsement of SLC restructuring is that the FCC must first make significant changes to its costing methodologies for the loop, as further explained below.

The second pillar of the proposal is the $650 million "universal service" component. The Ohio Commission has several concerns with this aspect of the proposal, including that: (1) there is no supporting financial documentation to support the negotiated $650 million fund, (2) there is no demonstrated need for the additional funding, (3) the impact on consumers' bills is not explained, (4) the funding associated with the Lifeline aspect of the proposal is not well explained, (5) the intention to bill end-users for the *existing and proposed USF funding* is not explained or legally justified, (6) it is not clear what services the fund is intended to support or at what levels, and (7) there is no reason given to support the FCC re-examining high cost USF funding on the heels of its universal service decision and reforms just released a few days ago. For those and other reasons set forth below, the USF proposal should be rejected.

The third plank of the CALLS proposal is the partial re-establishment and re-targeting of the 6.5% productivity offset. The Ohio Commission submits that no compelling argument has been set forth to justify the FCC abandoning its market-based approach to interstate access charge reform. One problem with the price cap proposal is that ILEC revenue flows would be maintained and supported by shifting them to end-users, possibly to the detriment of sustained, facilities-based competition.

Another major problem with the price caps proposal is that customers are guaranteed only rate increases under the CALLS plan, while those customers are only vaguely promised off-setting rate decreases relative to the price cap access charge reductions. In order for the purported "social compact" of lower rates to materialize for customers, an unambiguous and fail-safe mechanism would have to be developed to ensure that customers actually received those touted benefits. Ohio's experience in this area suggests that it is very difficult to ensure that dollar-for-dollar benefits are received by customers relating to reduced access charges. The Ohio Commission urges the FCC to continue the use of a market-based approach to interstate access reform, in conjunction with an aggressive interstate price caps plan, in order to bridge the transition to the desired result of allowing market forces to determine the level an and timing of interstate access charges.

II. BACKGROUND

On September 15, 1999, the FCC released a NPRM in the above-captioned proceedings seeking comment on a proposal set forth by CALLS. CALLS members consist of AT&T, Bell Atlantic, Bell South, GTE, Sprint, and SBC. The FCC indicates that the CALLS proposal is an interstate universal service and interstate access reform plan covering price cap ILECs. The proposal involves a five-year implementation period beginning in January 2000 and would apply to those carriers who voluntarily elect to participate. The CALLS members view their proposal as a negotiated package and request that the FCC either adopt it without modification or reject it in its entirety. More specifics regarding the proposal follow.

First, the CALLS proposal would phase out over a five-year period the PICC and, in most areas, CCLC rendered to IXCs by LECs. These revenue reductions would be replaced by increasing to $7.00 (from its current cap of $3.50) the monthly residential (SLC) to end-users. The SLC increase would be phased in over a 3.5 year period. Multi-line business (MLB) SLCs would be capped at $9.20. Minimum federal Lifeline support would be increased by an amount to mirror the new increased SLC. Carriers would be reimbursed from the universal service fund for any additional credits provided customers.

Second, the proposal calls for an increase in the current federal universal service fund by an amount equal to $650 million to provide participating companies with explicit support to replace implicit support thought by CALLS to exist in current access charges. This additional $650 million in support would be recovered directly by LECs from end-user customers through either a flat-rate charge or a charge based on the customer's usage.

Third, under the proposal, the interstate price caps formula would continue to include a productivity offset set equal to 6.5 percent annually until traffic sensitive charges reach $0.0055 per minute for the Bell Operating Companies (BOCs) and GTE, and $0.0065 for all other price caps carriers. Once the target rate is achieved, the annual productivity offset (a.k.a. the X-factor) would be set equal to the annual change in the Gross Domestic Product - Price Index (GDP-PI). In response to the reductions in interstate traffic sensitive access charges, the IXC signatories to the plan indicate that they will work with the FCC staff to review the effects of interstate access charge reductions.

Comments responding the CALLS proposal are due at the FCC on or before November 12, 1999. The Ohio Commission hereby submits its initial comments in response to the FCC's NPRM on the CALLS proposal.

III. DISCUSSION

A. GENERAL COMMENTS

As to the proposed SLC restructuring, the PUCO questions the appropriateness of the FCC permitting IXCs to include line surcharges on end-user bills for the presubscribed interexchange carrier charge (PICC). If the FCC continues to allow an end-user PICC, the PUCO believes that the FCC, at a minimum, should take steps to ensure that IXCs are not over-charging individual end-users. Given the current practice of an end-user PICC and the existing potential for over-charging end-users in the "pass through" process, the Ohio Commission wishes to provide comments on this aspect of the CALLS proposal. In that context, the Ohio Commission maintains that there may be some viable aspects to the CALLS proposal regarding the restructuring of common line charges, provided that the resulting SLC would include only nontraffic-sensitive costs associated with the loop and would not include any traffic sensitive charges (*e.g.*, the TIC, marketing charges, the information surcharge, local switching charges, etc.). Another condition to Ohio's endorsement is that, prior to implementing further loop cost recovery restructurings, the FCC must first make significant revisions to its costing methodologies for the loop.

The Ohio Commission also generally questions the other aspects of the CALLS proposal. For example, the Ohio Commission questions the appropriateness of transferring the recovery of interstate traffic-sensitive, switched-access revenues directly to end-user customers. Further, notwithstanding the purported pro-competitive characteristics of the proposal, it is not clear whether CALLS' true intent is to transfer the recovery of traffic-sensitive, switched-access revenues to end-users when such access charges would most likely be reduced to respond to competitive pressures.

The Ohio Commission questions the efficacy of establishing a $650 million interstate universal service fund for non-rural carriers prior to a demonstration of need for the fund is made by a particular carrier. The main issue is whether the $650 million fund will truly supplant implicit subsidies or will be utilized to maintain current revenues and simply perpetuate high profit margins for LECs. Regarding the CALLS USF component, it is also difficult to believe that the FCC would seriously consider revisiting another universal service "reform" so quickly on the heels of the FCC's October 21, 1999 decision.

Another problem is that the CALLS proposal is ambiguous on key points. As a related matter, the memorandum in support of the CALLS proposal (Appendix C to the NPRM) often conflicts with the actual plan (Appendix A to the NPRM). For example,

Appendix C does not reflect that the SLC would include charges for the RIC and marketing as does Appendix A. Moreover, the plan does not provide any of the necessary calculations to support its recommendations for a $650 million universal service fund. Similarly, no supporting costing methodology is provided to verify the proposed interstate local switching access charge reductions. As explained below, the proposal also appears to mischaracterize the Fifth Circuit's recent decision regarding recovery of universal service funding charges.

The PUCO maintains that the FCC must keep the CALLS proposal in perspective as an ambiguous, relatively-undefined agreement among a limited segment of interested parties. The FCC clearly should not grant any deference to the CALLS pre-packaged proposal, as might normally be granted to a Stipulation that resolves all of the issues presented in a case. By no means does the CALLS proposal definitively resolve all the important issues raised in the four dockets affected by the proposal: Low-Volume Long Distance Users, Access Charge Reform, Universal Service, and Price Cap Regulation. To the contrary, the CALLS proposal leaves important questions unanswered and contains substantial ambiguities regarding material elements of the plan itself. Yet, the proponents of the plan act as if it is a comprehensive settlement proposal and insist that "the FCC should either adopt without modification or reject." CALLS Proposal at 1.

Aside from the gaping holes and sizeable loopholes contained in the proposed plan, a mere glance at the signatory line suggests that the proposal is lacking in balance, consumer protections and public interest considerations. The CALLS proposal provides "something for everyone," as long as you are one of the limited interests behind the proposal. A quick overview of the CALLS plan reveals that it is generally self-serving and is not pro-competitive.

The proposal provides long distance carriers lower access charges while not firmly requiring corresponding consumer rate reductions or requiring proof that consumers will receive any direct benefit. The plan also shifts costs currently paid by IXCs to end-users, thereby further shifting the risks of competition to the consumer and the benefits to IXC and IILEC shareholders. ILECs will be afforded the ability to insulate themselves from competition through higher end-user residential charges, restructured access charges, and a $650 million guarantee for a continuing revenue stream for "universal service" — all this in the face of recent record-breaking profit levels for their shareholders. Meanwhile, all the residential consumer gets for certain under the CALLS proposal is higher rates.

As alluded to above, the signatories to the proposal do not even represent all of the ILECs or all of the IXCs, let alone all of the affected parties. There is no unanimity of positions among any industry segment, let alone among the key stakeholders. Another peculiarity is the fact that carriers can simply consent to participate in the plan without any consequences if they do not. Obviously, companies will only do so if the plan serves that company's shareholder interests better than the FCC's traditional public interest regulations. The narrow interests represented in the coalition proposal is fundamentally flawed. Each provision must be scrutinized anew from a public interest viewpoint.

If the FCC is to examine the merits of the CALLS proposal at all, it must do so on an issue-by-issue basis. Because it is not a comprehensive settlement of the pertinent issues and because it does not involve many of the key stakeholders affected by these "reforms," the FCC should not grant any deference to this pre-packaged proposal. Instead, the FCC should only adopt a particular proposal independently on its own merits, after full comments by all interested parties. There is no synergy among the plan's components, from a public interest perspective. Many of the provisions are purely the result of negotiated bargaining — nothing more and nothing less (and only among a limited set of stakeholders).

The Ohio Commission recommends that, if the CALLS proposal can only be adopted by the FCC on an all-or-nothing basis, the plan must be summarily rejected. As an alternative to adopting the CALLS proposal in its current form, the FCC could direct the CALLS consortium of carriers to make another attempt to file a proposal that takes into consideration the interests of all stakeholders. As a substitute to this recommended course of action, the FCC could request comment, in either its access reform or universal service generic proceedings, on those recommendations contained in the proposal that are identified to have merit.

In the context of considering the CALLS proposal, the Ohio Commission also urges the FCC to stay focused on two important and related principles: (1) the FCC should work to ensure that any end-user "pass through" charges (or changes to existing end-user charges) resulting from the CALLS proposal are fair and accurate, in light of the carrier's underlying costs, and (2) State commissions have ultimate authority over local telephone bills and remain able to require a separate local/intrastate telephone bill, if their concerns are not adequately addressed in this docket. These two principles should affect the FCC's consideration of each of the three major components of the CALLS proposal.

As a threshold matter, the FCC should require that accurate, unambiguous information be given to customers, particularly when they are billed monthly charges without regard to network usage. The FCC should be well aware of the fact that carriers currently "pass through" charges relating to universal service and access that simply do not match up with the "corresponding" charges those carriers are billed. More specifically, carriers routinely bill and "recover" an amount greater than that carrier contributes to universal service relative to that customer. This violates the FCC's mandate in the universal service proceeding.

As the FCC required, "[t]o the extent carriers seek to pass all or part of their contributions on to their customers in customer bills, we wish to ensure that carriers include complete and truthful information regarding the contribution amount." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (released May 8, 1997) (*"USF Order"*) at ¶ 855. Similarly, the *USF Order* unambiguously stated that, if carriers "choose to pass through part of their contributions and specify that fact on customers' bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers and that accurately describes the nature of the charge." *Id.*

The current problem associated with universal service and access "surcharges" must be addressed if implementation of the CALLS proposal is to be seriously considered. For example, the CALLS proposal apparently would not guarantee that the current abuses would cease or even that the proposed charges for access and universal service would be eliminated. It is simply not clear how the new charges would affect the current charges (some of which are already a problem). Further, the universal service component of the CALLS proposal does not even specify or estimate what the end-user charges would be under the plan. Logic also dictates that competition is facilitated when customers have accurate information and are fully informed as to the charges being paid for services. The FCC recently acknowledged this in its Truth-In-Billing order. *Truth-In-Billing*, CC Docket No. 98-170, First Report and Order and Further Notice of Rulemaking, FCC 99-72 (released May 11, 1999). In short, the FCC must examine the issues of fairness and accuracy in the context of any end-user charge resulting from the CALLS proposal, particularly in light of carriers' recent track records in this area.

State commissions have exclusive authority over all retail intrastate telephone matters and, ultimately, over the local telephone bill. As the Supreme Court reinforced earlier this year, *Louisiana Pub. Serv. Comm. v. FCC*, 476 U.S. 355 (1986) is still good law, and 47 U.S.C. § 152(b) still operates as a general prohibition against FCC jurisdiction over intrastate telecommunications matters where Congress has not granted the FCC explicit rulemaking authority over intrastate matters. *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721, 731 (1999). In particular, a showing by the FCC that a particular statute applies to intrastate matters in an "unambiguous and straightforward" manner is required in order to override the command of 152(b). *Id.* Although the local competition provisions of the 1996 Act satisfy this test relative to the wholesale interconnection provisions, those provisions do not bear upon the end-user billing issues being addressed by the CALLS proposal. Moreover, the Fifth Circuit recently reached a specific holding that Section 254 does not convey authority upon the FCC over intrastate matters relating to universal service. *Texas Office of Public Utility Counsel* *v. FCC*, 183 F.3d 393, 447 (5th Cir. 1999). Thus, unless State interests are adequately addressed by the FCC in this proceeding, the FCC should be aware that State commissions may consider resorting to requiring a separate intrastate telephone bill.

B. COMMON LINE REFORM

The CALLS proposal reflects that the SLC, the PICC, and the CCLC are ultimately unified into a single charge to end-users (*i.e.*, the restructured SLC), which can be deaveraged, but cannot not exceed $7.00 for residential and single line business lines and $9.20 for MLB lines. For primary residential lines and single line business lines, the combined total in most, but not all, areas will be approximately $5.50 on January 1, 2000. In subsequent years, the primary residential and single line business common line transition continues as the nominal SLC cap for those lines would increase to $6.25 on January 1, 2001, to $6.75 on July 1, 2002, and to $7.00 on July 1, 2003.

The parties to the CALLS proposal further submit that the plan's reforms will relieve growing pressure on the FCC to regulate the Internet. For instance, the CALLS parties note that packet-switched services, including Internet Protocol ("IP") services, increasingly will be able to provide substitutes for circuit-switched services. As these less usage-sensitive packet-switched services emerge, they will make usage-based per minute implicit universal service support unsustainable. Typically, providers of packet services charge on a flat-rated basis, rather than by the minute. In fact, flat-rated pricing is one of the potential efficiencies of a packet-based network, which early packet-based retail offerings such as cable modems and xDSL services reflect. The CALLS proponents, therefore, maintain that a support system that relies on per-minute access charges cannot survive the emergence of packet services without imposing a time-metered rate structure on them — a pricing model the consumer market for IP services has already rejected. By significantly reducing the traffic-sensitive prices of switched-access services, the CALLS plan purports to substantially resolve these issues, reduces opportunities for arbitrage, and permits the development of rational pricing structures for all services. While the Ohio Commission believes that the CALLS proposal (as filed) must be rejected, the Ohio Commission will proceed to give specific comments regarding the merits of each component of the plan — as requested by the NPRM.

1. SLC Increases

As discussed above, the PUCO questions the FCC's practice of allowing IXCs to include a surcharge on end-user bills for the PICC. Because those Federal charges are currently a reality, however, the PUCO maintains that the FCC should take steps to ensure that IXCs are not over-recovering from individual end-users those "pass-through" charges for the PICC.

In that context and assuming that the FCC allows the current IXC practices to continue, the Ohio Commission could partially endorse the CALLS proposal to move the recovery of the PICC directly to the end-user by including the charge with the SLC.

The Ohio Commission maintains that adopting this approach to recovery of the PICC will ensure that carriers, when assessing this charge to end-users, are not inflating their costs. In particular, it could be less expensive for end-users to require LECs to assess a cost-based PICC to end-users rather than to allow the IXCs to recover their PICC related expenses at inflated rates. Additionally, we note that the IXC's PICC-related charges to end-users appear to be detariffed while LEC-related charges for the interstate loop remain regulated. In further support of this position, there is currently no way for the end-user to avoid this charge since the LEC is authorized to render the PICC directly to end-users who fail to pre-subscribe to an IXC's services. Taking all of these circumstances into consideration leads us to conclude that the least-cost alternative to the end-user customer for payment of the PICC may be to have the charge rendered directly to the end-user by the LEC and to remove any IXC involvement with that charge.

2. Internet Arbitrage

Subject to the general conditions stated above, the Ohio Commission notes that there may be some merit associated with the proposal to move CCL charges to the SLC to avoid bypass of the local exchange network to place long distance calls over the Internet. That is, one of the Proposal's stated benefits is that shifting the recovery of fixed costs from variable rates to non-variable rates, *i.e.*, the elimination of the CCLC, will lessen the rate arbitrage currently occurring between Internet-based services and standard wireline long distance service. Currently, the local rates paid by Internet Service Providers ("ISP") for service tends to be lower than the access charges paid by IXCs. By restructuring the recovery of fixed access costs so that they are recovered using fixed rates, the usage rates that IXCs pay to LECs are lowered, thus aligning the local and non-local switching rates more closely. Given the current status of rates charged to ISPs (based on existing FCC decisions regarding access charges and dial-up Internet traffic), there has been a significant effort directed at shifting voice traffic to the Internet. The PUCO believes that the current rate divergence between what ISPs are charged and what IXCs are charged has been a major factor fueling this effort. In this context, the Ohio Commission acknowledges that there may be some merit associated with the proposals to move CCL charges to the SLC.

3. De-averaging the SLC

The CALLS proposal provides for de-averaging the SLC as part of its overall SLC reform. The PUCO submits that it is appropriate to permit carriers to have de-averaged SLCs. Indeed, the PUCO has already permitted de-averaged retail rates within the State of Ohio on various components of the network including the loop and various transport offerings. Ohio has also permitted a de-averaging of toll rates in order to reflect varying carrier access charges. As indicated previously, the PUCO's main concern lies in our belief that items such as the SLC should be, in principle, cost-based charges. Not only should the overall revenue cap on the SLCs be capped at cost, but each SLC zone rate must be based on cost as well. The end-user's line charge is perhaps the most critical rate element involved in keeping the consumer connected to the Public Switched Telephone network ("PSTN"). Whatever de-averaging is permitted should be cost justified in the aggregate, as well as on a zone-by-zone basis.

4. Conflicting Costing Methodologies

The Ohio Commission submits that the CALLS proposal promotes subtending costing methodologies for the loop and traffic-sensitive switched access. In particular, the PUCO notes that the plan proposes to drive switched costs towards TELRIC. The Ohio Commission submits, therefore, that similar (if not the same) pricing methodologies should apply to pricing of the loop and SLC. Second, the CALLS proposal implicitly incorporates the idea that embedded costs, as somehow reflected through the use of LEC revenues, are the appropriate basis upon which to create new end-user rates. Indeed, there has been some past precedent wherein the FCC has stated that current revenues can be appropriate in the development of rates (*e.g.*, carrier access rates). The Ohio Commission maintains that the CALLS proposal, however, differs in one significant respect from previous FCC determinations on this point. In the past, the FCC's reforms were primarily directed at inter-carrier compensation. The CALLS proposal extends this philosophy directly to retail rates.

Particularly disturbing is the fact that it would impose this global philosophy on those customers who have the least ability to avoid having these charges being assessed to them: end-users. This is very important because much of what CALLS is advocating is being justified in terms of above-cost access charges being universal service subsidies. If some massive subsidy were really the case, then why are the unseparated cost-based total element long run incremental cost (TELRIC) loop rates for carriers such as Ameritech lower than the carrier common line rates being advocated by the CALLS proposal? The obvious answer to this question is that the carrier common line rates being proposed by CALLS would grossly exceed 25% of Ameritech's TELRIC loop rates (in fact, the rate cap proposed by CALLS exceed 100% of Ameritech's TELRIC UNE loop rate). Also, for LECs such as CBT, if the CALLS-proposed $7 and $9 SLCs were actually imposed, those SLCs would exceed 25% of the *company-proposed* unseparated TELRIC loop rates of $19 to $28.[1] GTE-Ohio, which proposed a two-wire analog TELRIC rate of $30.00 would also receive over 25% of its loop costs if it received a SLC of $9 on a line. In short, CALLS asks customers to bear above-cost pricing on the most fundamental, non-competitive, rate element of their service.

[1] Regarding CBT, the company-proposed rate is given as the extreme example because the Ohio proceeding to establish CBT's permanent TELRIC rates, PUCO Case No. 96-899-TP-ALT, is currently pending before the Ohio Commission. Although the Ohio Commission recently issued a decision in that case on November 4, 1999, the resulting TELRIC rates have not yet been calculated.

5. Other SLC-Related Issues

The CALLS proposal at Section 2.1 reflects that the common line charge (as SLC) to end-users (through the restructured SLC) will include charges associated with the transport (or residual) interconnection charge and marketing. The Ohio Commission notes that these charges should assessed to IXCs through traffic-sensitive access charges until phased out by price caps regulation or reduced in response to competition. Since these charges (marketing and RIC) are not associated with the cost of an end-user's local loop, the Ohio Commission ardently opposes any restructuring of the SLC to end-users that would include costs beyond those associated directly with the loop. The SLC should consist of only those costs that it is intended to recover (*i.e.*, the 25 percent of the loop assigned to the interstate jurisdiction).

Expressed another way, since some interstate RIC and marketing charges are proposed by the CALLS recommendation to be transferred to the residential SLC, the Ohio Commission questions whether the ILEC parties to the CALLS proposal are simply attempting to shift revenue flows to residential end-users prior to these charges being reduced by either price caps regulation or in response to competitive market pressures. Moreover, the Ohio Commission observes that a majority of the proposed revenue shifts will be recovered by residential customers, who may not realize effective competition until well after the proliferation of switched access competition to business. Taking these facts into consideration, one must question whether the plan is truly pro-competitive, or whether the ILEC parties to the plan are simply attempting to sustain current revenue levels before they are otherwise eroded. That is, the Ohio Commission suspects that the ILEC signatories to CALLS are attempting to maintain the revenue levels from federal access charges to residential end-user customers through flat-rate charges before mandatory price caps reductions are implemented and/or competition in the switched access market requires the ILECs to respond with price reductions.

The Ohio Commission notes that its recommendation to the FCC to restructure nontraffic-sensitive charges associated with the SLC cannot be implemented on a piecemeal basis. That is, if the SLC is to be restructured, the FCC must review it costing methodologies to ensure that similar costing methodologies are utilized for both traffic-sensitive access charges and nontraffic sensitive loop charges. The FCC must also review its costing methodologies to ensure that LECs are not over recovering loop-related cost through the restructured SLC. The Ohio Commission also submits that no charges for the restructured SLC should include costs for any non-loop related charge. Finally, since additional restructuring of the loop will most likely result in additional customer confusion, the PUCO submits the FCC and the involved carriers must embark upon an aggressive customer awareness campaign to assist customers in understanding the charge restructurings and their associated benefits.

C. "UNIVERSAL SERVICE" FUNDING

The CALLS parties recommend that the FCC establish an annual $650 million federal universal service fund (USF) for price cap carriers. The proposal reflects that the USF would be targeted to offset implicit support in interstate access charge rates. This size for access USF assumes a final nominal residential and single line business SLC cap of $7.00, and a final nominal MLB SLC cap of $9.20. Changes in the level of these caps would change the appropriate level of universal service funding. The plan appears to assume that all price cap LECs are included (even though each company's consent is required under the plan on a company-by-company basis).

The CALLS proposal requests that the FCC reconsider the requirement that price cap ILECs recover "universal service contributions" through adjustments to the Price Cap baskets and services that generate end-user revenue, and permit price cap incumbent LECs to establish a separate rate element to recover universal service contributions. Under the CALLS proposal the interstate USF rate element will be charged directly to all end-users. The proposal further reflects that the USF rate element may be assessed on a per-line basis or as a percentage of interstate retail revenues and, at the option of the ILEC, it may be combined for billing purposes with other end-user retail rate elements.

1. Overall Concerns

There is no supporting financial documentation provided by CALLS for the proposed $650 million USF. Based on this lack of financial support for the fund, the Ohio Commission must question whether this proposed fund is a keep-whole revenue "shell game" or a legitimate proposal to maintain affordable local service costs. Absent supporting documentation, basic questions remain unanswered such as what services the proposal intends to fund and at what levels. Moreover, the CALLS proposal is vague as to whether the $650 million cap is a steadfast annual cap, a projected ending point for the fund, or merely a starting point. This confusion stems from the fact that the proposal sometimes reflects that the $650 million cap assumes a residential end-user SLC of $7.00 per month, per line. Based on this assumption, it is unclear how the fund can be capped initially at $650 million if the residential end-user SLC will not reach the $7.00 rate until July 2003.

Moreover, the plan does not identify the additional amounts necessary to fund the proposed increases to the Federal Lifeline program. The Ohio Commission also questions whether the CALLS plan would permit LECs to bill end-users directly for all contributions made to the federal universal service fund and not just the increases to the fund resulting from this proposal. If the true intent of the proposal is to permit the LECs to bill end-users for the LEC portion of the $5 billion federal USF, then the plan is egregiously misleading by not including the entire amount end-users will be expected to pay. Finally, the proposal fails to identify the additional monthly flat rate cost/charge to end-users if the plan were adopted.

The lack of supporting documentation demonstrating a need for the $650 million also raises a question as to whether the fund will simply maintain current revenue flows or will be used for the intended purpose of supporting reasonably-priced basic local exchange service. Consistent with the Ohio Commission's comments filed in the FCC's universal service proceeding (CC Docket No. 96-45), carriers should be required to demonstrate that federal universal service funds are being used for their intended purpose (*i.e.*, to advance universal service and to make service in high cost service areas more affordable).

A demonstration of need is extremely important where the ILEC is exceeding a reasonable rate of return on regulated services. Consequently, both the States and the FCC must ensure that high cost support is not simply increasing the incumbent carriers' profits or maintaining revenue flows through new charges to carriers or end-user customers. Moreover, as a precondition of federal universal support, carriers should be required to demonstrate to the FCC, on a study area-by-study area basis, that federal high cost funding is necessary to maintain or advance universal service. It is only reasonable to assume that, to the extent carriers are being assessed federal universal service support charges, such charges will eventually be borne by consumers through either surcharges or charges bundled in rates for other services.

To this end, the FCC and the states must ensure that consumers are not supporting the over-earnings of carriers. As a point of reference for the PUCO's position, Ohio Local Competition Guideline XIII (PUCO Case No. 95-845-TP-COI), requires that, unless the PUCO finds it otherwise appropriate because the involved carrier is subject to competition, ILECs are eligible for high cost funding only if such carrier's return on equity does not exceed 12 percent. Guideline XIII further provides that the ILEC must not be exempt from competition pursuant to section 251(c) of the 1996 Act and the PUCO's local competition guidelines.

As discussed previously in these comments, a consolidated, cost-based, SLC charged directly to end-users may be appropriate subject to some important conditions. However, to allow a $650 million non-cost based line-item charge, above the level of the SLC, is *not* in the public interest. No demonstration of need has been made in this record. While high earnings are always desirable to stockholders, such desirability does not equate to a public benefit. Moreover, the entire cost-based universal service effort presently being carried out by the FCC would be degraded under the CALLS proposal into nothing more than a "golden parachute" for LECs as they are guaranteed all of their current revenue streams. While the PUCO understands that CALLS views its proposal and its treatment of the "excess" $650 million, as distinct from the FCC's current universal service proceeding, the very fact that CALLS characterizes the $650 million as universal service belies that distinction.

On a related matter, on October 21, 1999, the FCC adopted its decision in CC Docket No. 96-45 regarding federal high cost assistance to non-rural carriers. In its decision, the FCC determined that, under its new high-cost regime, non-rural carriers in seven states will receive a total of $255 million in support. The Ohio Commission observes that the FCC's decision was developed on comprehensive input collected from various commenters over a 2.5-year period of time. Consequently, the Ohio Commission questions the awkward timing of the CALLS recommendation for the FCC to establish a $650 million universal service fund to non-rural carriers. The Ohio Commission submits that, if the CALLS advocates believe the FCC's new funding mechanism to be inadequate, it would be more appropriate for these carriers, consistent with the FCC's rules, to file for reconsideration of the FCC's decision in federal universal service proceeding (CC Docket No. 96-45). [2]

The FCC should stay the course with its current philosophy that any universal service charges should be subject to a strict cost-based standard. Should the FCC find that cost-based SLC caps might create a universal service concern or that cost-based amounts above the SLC caps might be needed to ensure universal service, such discussions should occur within the universal service proceeding. By doing so, these issues can be appropriately considered within the context of existing universal service considerations and decisions. Additionally, it remains unseen whether there is a legitimate need for the proposed fund — based on the lack of financial documentation for the proposed USF.

2 The Ohio Commission, in supporting NARUC's request for an extension of the comment cycle in this docket, argued that it was critical for commenters to examine the FCC's new USF Order in the context of evaluating the CALLS proposal. Indeed, the Ohio Commission had hoped to review the FCC's new USF Order in order to provide more detailed comments regarding the relationship between the new USF Order and the CALLS proposal. If the Order is released in time, such a discussion may be possible in the Reply Comments in this docket. Suffice it to say at this time that there appears to be no reasonable basis for the FCC to re-evaluate the USF reforms just adopted.

2. National Pooling of the Collection and Disbursement of $650 Million.

At this time the PUCO cannot concur with the mechanism recommended for the collection and disbursement of the $650 million "excess" revenue fund. Ohio strongly objects to being asked to fund the revenue streams of carriers located outside Ohio. This is particularly egregious since what Ohio consumers are being asked to fund directly is neither related to the true cost of providing service, nor been subject to any analysis of the need to provide these funds using a USF-type mechanism. The Ohio Commission reiterates that this $650 million must be subject to the full review that has occurred, and will continue to occur, in the universal service docket.

3. The FCC Should Not Require an End-User Charge for USF

The FCC should not endorse a requirement that universal service contributions be recovered directly from end-users. In the *USF Order*, the FCC agreed with States that "[a] federally prescribed end-user surcharge would dictate how carriers recover their contribution obligations and would violate Congress's mandate and the wish of the state members of the Joint Board." *USF Order* at ¶ 853. In this regard, the FCC explicitly determined that "[m]andating recovery through an end-user surcharge would eliminate carriers' pricing flexibility to the detriment of consumers." *USF Order* at ¶ 853. *See also USF Order* at ¶ 855 (the universal service contribution is not a federally mandated direct end-user surcharge and it would be misleading for a carrier to characterize it as such).

Under the universal service provisions of the CALLS proposal, LECs would be guaranteed an ongoing revenue stream that is generated directly by end-users. The FCC's prior refusal to endorse a direct end-user surcharge for universal service is consistent with Section 254 of the 1996 Act, which requires that "*providers* of telecommunications services make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4) (1999) (emphasis supplied). The FCC should maintain its previously-established course and avoid endorsing any requirement that end-users pay a universal service surcharge.

CALLS maintains that the Fifth Circuit decision in *Texas Office of Pub. Util. Counsel v. FCC* required that LECs recover universal service contributions from end-users. CALLS Memorandum in Support (Appendix C) at footnote 51. In reality, the Court was concerned with the *implicit* nature of the FCC's method for recovery of USF contributions. In the short discussion of this issue in the opinion, the Court uses the terms "explicit" and "implicit" no fewer than 18 times, juxtaposing the concepts of explicit contribution recovery versus implicit recovery. The Fifth Circuit expressly acknowledged that Section 254 "provides little guidance on whether 'explicitly' means 'explicit to the consumer (as urged by GTE) or 'explicit to the carrier' (as urged by the FCC)." *Texas Counsel,* 183 F.3d at 425. Of course, in the context of interstate access services offered by LECs, this issue is somewhat confusing because the carrier (*i.e.*, the IXC) is the customer. Although an explicit recovery mechanism is required by Section 254 and the *Texas Counsel* decision, requiring an end-user surcharge for USF is directly contrary to the 1996 Act. The FCC seems to have recently agreed with Ohio's position in this regard, in its November 2, 1999 USF decision. *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Ninth Report and Order, at ¶32 (concluding in response to the *Texas Counsel* decision that ILECs still have the option of creating an explicit access charge to recover their USF assessments from IXCs).

D. PRICE CAPS CHANGES

The proposal reflects that all the price cap reductions flowing from an X-factor (a.k.a. the productivity offset) of 6.5% are initially targeted to reduce traffic-sensitive charges until those charges reach the target rate ($0.0055 per minute by tariff filing entity for Bell Companies and GTE, and $0.0065 per minute by tariff filing entity for other price cap ILECs). When the filing entity's average traffic-sensitive switched interstate access charge reaches the target rate then the X-factor becomes equal to GDP-PI. The proposal also indicates that all X-factor targeting is done at the tariff-filing entity level, not at a holding company level. Beginning July 1, 2001 (*i.e.*, after one full year's X-factor reduction), an ILEC may choose not to target X-factor reductions from special access to reduce switched access rates.

The PUCO submits that no compelling argument has been set forth by the parties to the CALLS proposal for the FCC to abandon its market-based approach to access reform. Specifically, consistent with the Ohio Commission's strenuous objections to including any traffic-sensitive, switched-access charge(s) in the nontraffic-sensitive SLC assessed end-users, the Ohio Commission maintains that the FCC should continue to target annual price caps reductions towards the RIC. Once the interstate per-minute rate for the RIC has been eliminated, the FCC should target annual reductions toward the interstate information surcharge. Once again, the PUCO notes that the CALLS proposal seems to be maintaining revenue flows by shifting them to residential end-users while simultaneously proposing to reduce switch access charges possibly to the detriment of competition, facilities-based switched access.

Moreover, consistent with the Ohio Commission's comments filed previously in CC Docket No. 96-262 on access reform, the PUCO maintains that, in general, a market-based approach to access reform in conjunction with an aggressive interstate price caps plan is the most appropriate method to achieve the FCC's goal of increased local telephone competition and reasonable access charges.[3] The distinct advantage of the market-based approach is that it allows market forces, rather than regulation, to determine the level and timing of price changes in the access market. Until competition becomes pervasive in the switched access marketplace, an aggressive interstate price caps plan will continue to work to emulate a competitive marketplace by ensuring overall reductions in the switched access services.

The Ohio Commission continues to believe the market-based approach should include a requirement that caps interstate access charges at FCC price cap rates and sets the floor at the TELRIC price. The PUCO notes that the ceiling would prevent abuses in an emerging competitive market and the estimated TELRIC floor would eliminate the temptation of setting the prices temporarily too low to discourage potential entrants into the market (*i.e.*, predatory pricing). On the issue of predatory pricing, the Ohio Commission further notes that the CALLS proposal provides no costing methodology supporting the proposed reduction. If these proposed access charges are priced below economic levels, the charges could actually work to the detriment of promoting competition in the switched access marketplace.

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[3] The Ohio Commission notes that nothing in its comments in this FCC docket should be construed to imply any position or conclusion regarding intrastate access charge reform. For example, there are currently two complaints pending before the Ohio Commission, wherein AT&T alleges that the intrastate access charges of GTE and United Telephone companies are unreasonable and unlawful under Ohio law. *See* PUCO Case Nos. 99-1180-TP-CSS and 99-1181-TP-CSS. Of course, the Ohio complaint proceedings involve intrastate access charges, rather than interstate charges, and State law is applied, rather than Federal law. Further, the two ILECs involved are also not regulated by price caps for intrastate services, but have been subject to traditional rate-of-return regulation. Moreover, when an individual LEC's access charges are examined, the specific level of local competition can be better assessed and incorporated into a decision. Thus, the Ohio Commission's comments in this docket should only be construed to apply to interstate access charge reform issues in the context of the CALLS proposal.

E. LONG DISTANCE RATES REDUCTION AND CUSTOMERS' BILLS

The CALLS proposal purports that its interstate access and universal service provisions are in the public interest because the resulting interstate access reductions will produce lower long distance bills while the SLC and universal service revenues the plan produces will help to protect and enhance universal service and the local exchange infrastructure. The IXC signatories commit to meet with the FCC to review the effects of the interstate access reductions under the plan on long distance customers, and the incumbent LEC signatories commit to meet with the FCC to review effects of the SLC increases and SLC de-averaging under the plan on local customers.

Specifically, the parties to the CALLS proposal maintain that the FCC's prior decisions establishing the SLC and PICC already have brought per-minute toll charges to their lowest levels in history, spurring demand for these services, making telecommunications services more affordable, and benefiting users of the interstate telecommunications network. The CALLS proposal's additional simplified flat-rated recovery of common line costs, together with other changes in the plan, could pave the way for further innovation in long distance pricing, potentially enabling long distance providers to offer rate plans that resemble Internet flat-rates. By dramatically reducing switched access charges, which can thus lower long distance bills, CALLS contends that the plan would, in fact, make telephone service more affordable. Finally, the proposal reflects that consumer bills will be simplified as confusing fees and charges are consolidated.

The Ohio Commission submits that, given how long distance interstate rates are determined, it is very difficult to guarantee that all reductions in interstate access charges will result in a dollar-per-dollar reduction in interstate long distance charges.

The PUCO further observes that MCI, in addition to many other smaller IXCs, are not a party to this agreement, which further exacerbates our skepticism concerning the touted end-user benefits.

Ohio mirrors most federal access charges, and is deeply troubled by the fact that CALLS has provided no mechanism by which State Commissions can be assured that the proposed shift in revenue/cost recovery from carriers to end-users is flowed through to end-users in proportion to the payments made by each customer class. As the concern surrounding the rate levels of the PICC on end-user bills illustrates, rate restructuring that does not include strict criteria for demonstrating the flow-through of such rate restructuring is riddled with opportunity for abuse by the involved carriers. Therefore, a detailed mechanism for demonstrating a flow-through to end-users commensurate with their customer class contributions must be in place *before* any significant rate restructuring such as the one contained within the CALLS proposal is considered. In order for the "social compact" of lower rates promised by CALLS to materialize for customers, an unambiguous and fail-safe mechanism must be developed to ensure that customers actually receive those touted benefits.

The PUCO concurs that end-user bills are becoming increasingly difficult to understand. However, CALLS' assertion that its proposal may eliminate this confusion is dubious. The two most recent charges appearing on end-user bills have been put there voluntarily by carriers, and were not affirmatively required as Federal surcharges by the FCC. Moreover, the FCC should be mindful that the level of the charges has probably factored as much into the debate as the line-item charges themselves. If confusion has been created, it is because the IXCs and LECs have created it. It is disingenuous and self-serving for CALLS to claim to solve the confusion which many of its members created. For end-users, as a result of the CALLS proposal, to now see certain charges eliminated, others increased, and new ones appear, will engender significant confusion of its own.

F. LIFELINE

The CALLS proposal indicates that the minimum federal Lifeline support will be increased effective January 1, 2000, and coincident thereafter with changes in nominal SLC caps so that all of the SLC will continue to be waived for Lifeline customers. In subsequent years, CALLS proposes to increase minimum federal Lifeline support in the same amount as increases in the primary residential SLC.

The FCC has had the longstanding goal of ensuring that all consumers have affordable access to telecommunications services. The FCC has long understood that the amount of the SLC has an impact on universal service concerns such as affordability. *See e.g., USF Order* at ¶ 838. Increasing the SLC in the manner CALLS proposes may jeopardize, for a significant number of customers, the goal of affordability the FCC has long protected.

The CALLS plan establishes SLC caps for both primary residential and single business lines that start at $5.50 and rise to $7.00 by July 2003. *Memorandum In Support of CALLS Plan*, at xvii-xviii. Lifeline support, says CALLS, would increase to hold Lifeline customers harmless against SLC restructuring, including the consolidation of PICCs with the SLC. *Id.*

While CALLS may purport to hold Lifeline customers harmless, adoption of its proposal may result in reduction of current customer benefits. That is, eligible customers currently receive minimum level of Federal Lifeline support equal to $5.25 per month. This is $1.75 greater than the current SLC of $3.50. Under the CALLS proposal Lifeline customers would lose at a minimum the $1.75 benefit if the benefit is included to only match the interstate SLC.

IV. CONCLUSION

If the CALLS proposal is considered as a package, it must be rejected. If the FCC considers the merits of individual Subscriber-components of the proposal, then the Ohio Commission urges the FCC to adopt and implement the comments made herein.

Respectfully submitted,

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